

Although the Examiner has not properly explained the relevance of Sagan '856 to Applicants' claims, Applicants will respond to the relevance of Sagan '856 to Applicants' Claims 1-7 and 10-20.

Applicants respectfully assert that their Claims 1-7 and 10-20 are not anticipated by Sagan '856 under 35 U.S.C. § 102(b). According to MPEP § 2131 a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. The elements must be arranged as required by the claim.

Herein, Sagan's container is missing several elements of Applicants' shaped container bottom. First, Sagan '865 does not provide a container whose concave-curvature bottom panel substantially conforms to the curvature of a snack piece. Shrimp may very well be considered curved, however, Sagan '856 does not provide for a container bottom wherein the entire surface of the container bottom operates to substantially conform to the curvature of the shrimp. Also, Sagan '856 does not provide for a stacked snack chip container. Without these elements and others, Sagan '856 cannot be properly said to provide a basis for a 35 U.S.C. § 102(b) rejection. Applicants therefore respectfully request reconsideration and allowance of Claims 1-7 and 10-20 over the Examiner's 35 U.S.C. § 102(e) rejection.

Claims 1-4 stand rejected under 35 U.S.C. § 102(b) as being *clearly* anticipated by Ruiz (U.S. Patent No. 4,873,099). [Emphasis added].

Unfortunately, again the Examiner has failed to properly clarify what it is in the reference, namely Ruiz '099, that is the source of anticipation as defined by 35 U.S.C. § 102(b). More specifically, the Examiner has failed to properly describe what in Ruiz '099 serves as the basis for his 35 U.S.C. § 102(b) rejection as is required by 37 C.F.R. § 1.104(c)(2).

Although the Examiner has not properly explained the relevance of Ruiz '099 to Applicants' claims, Applicants will respond to the relevance of Ruiz '099 to Applicants' Claims 1-4.

Applicants' invention comprises a shaped container bottom formed thusly to receive a plurality of curved snack pieces. The bottom panel of the container has a concave-curvature that substantially conforms to the curvature of the snack pieces. Furthermore, at least a portion of the peripheral edge of the lowest snack piece rests upon the bottom panel.

Ruiz '099 does not provide a curved container bottom. Ruiz's container bottom is completely planar and non-curved in any respect which is evident in his Figs. 5 and 6. Also, no part of the peripheral edge of the lowest edible product in Ruiz '099 touches or makes contact with the bottom panel of Ruiz's container.

Since at least one element is missing to properly establish a rejection under 35 U.S.C. § 102(b) based upon Ruiz '099, Applicants respectfully request reconsideration and allowance of Claims 1-4 over the Examiner's rejection.

Claims 1-4, 6-10 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by a stack of three or more PRINGLES potato crisps as disclosed by Applicants' specification.

Quite simply, a stack of PRINGLES potato crisps, in and of themselves, do not provide a curved, concave container bottom for stacking said crisps. Without the curved container bottom to stack the crisps, which Applicants claim and show, a key element to establishing a proper rejection under 35 U.S.C. § 102(b) is missing. Applicants respectfully assert that the Examiner has not made a proper rejection based on anticipation and therefore request reconsideration and allowance of Claims 1-4, 6-10 and 19 over under 35 U.S.C. § 102(b) as being anticipated by a stack of three or more PRINGLES potato crisps as disclosed by Applicants' specification:

35 U.S.C. § 103 Rejection

Claims 8 and 9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sagan '865. The Examiner states that Sagan '865 discloses the invention except for the center radius dimensions. The Examiner further states that it would have been obvious by design choice to reduce the scale (make invention smaller) in order to accommodate smaller shrimp and reduced amount of dipping sauce required for smaller shrimp so that the size [of] the center radius is less than 60 mm and between 15 to 35 mm.

By the Examiner's comments above, it seems to Applicants as if he believes that Applicants have created an invention for shrimp. Clearly, Applicants have invented a shaped container bottom for containing a plurality of curved snack pieces wherein the concave-curvature of the bottom substantially conforms to the curvature of the snack pieces and also wherein at least a portion of the peripheral edge of the lowest snack piece rests upon the bottom panel of the container bottom.

Applicants note that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the *prior art reference* must teach or suggest all of the claim limitations. (MPEP § 2142).

To these ends, Applicants respectfully disagree with the Examiner's contentions that Sagan '865 discloses the invention except for the same center radius dimensions. As has been noted above, Sagan's shrimp tray is missing several elements of Applicants' shaped container

bottom. First, Sagan '865 does not provide a container whose concave-curvature bottom panel substantially conforms to the curvature of a snack piece. Shrimp may very well be considered curved, however, Sagan '856 does not provide for a container bottom that operates to substantially conform to the curvature of the shrimp. Also, Sagan '856 does not provide for a stacked snack chip container. Rather, Sagan '865 merely teaches a circular shrimp tray for arrangement of shrimp in a circular configuration.

Sagan '865 neither teaches or discloses the elements of Applicants' invention and without such teaching or disclosure, the Examiner's obviousness rejection cannot properly stand. Therefore, Applicants respectfully request reconsideration and allowance of Claims 8 and 9 over 35 U.S.C. § 103 in view of Sagan '865.

SUMMARY

All of the rejections in the Office Action have been discussed as have the distinctions between the cited references and the claimed invention.

In light of the discussions contained herein, Applicants respectfully request reconsideration of the rejections and their withdrawal, and all of the claims allowed.

Issuance of a Notice of Allowance at an early date is earnestly solicited.

Respectfully submitted,

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